

§ 10.30

10 CFR Ch. I (1–1–99 Edition)

(e) The Hearing Examiner shall not consider the possible impact of the loss of the individual's services upon the NRC program.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.30 New evidence.

After the close of the hearing, in the event the individual discovers new evidence not previously available or known to him or her, the individual may petition the Hearing Examiner if the Hearing Examiner's recommendation has not yet been issued, or thereafter, the Director, Office of Administration, to reopen the record to receive that evidence. If the Hearing Examiner or the Director, respectively, deem it material and appropriate, the record may be reopened to accept the evidence either by stipulation, with the agreement of the Hearing Counsel, or in a reconvened hearing.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.31 Actions on the recommendations.

(a) Upon receipt of the findings and recommendation from the Hearing Examiner, and the record, the Director, Office of Administration, shall forthwith transmit it to the Executive Director for Operations who at his or her discretion may return the record to the Director, Office of Administration, for further proceedings by the Hearing Examiner with respect to specific matters designated by the Executive Director for Operations;

(b)(1) In the event of a recommendation by the Hearing Examiner that an individual's access authorization and/or employment clearance be denied or revoked, the Executive Director for Operations shall immediately notify the individual in writing of the Hearing Examiner's findings with respect to each allegation contained in the notification letter, and that the individual has a right to request a review of his or her case by NRC Personnel Security Review Examiners and of the right to submit a brief in support of his or her contentions. The request for a review shall be submitted to the Executive Di-

rector for Operations within five days after the receipt of the notice. The brief shall be forwarded to the Executive Director for Operations, for transmission to the NRC Personnel Security Review Examiners, not later than 10 days after receipt of such notice.

(2) In the event the individual fails to request a review by NRC Personnel Security Review Examiners of an adverse recommendation within the prescribed time, the Executive Director for Operations may at his or her discretion request a review of the record of the case by NRC Personnel Security Review Examiners. The request shall set forth those matters at issue in the hearing on which the Executive Director for Operations desires a review by the NRC Personnel Security Review Examiners.

(c) Where the Hearing Examiner has made a recommendation favorable to the individual, the Executive Director for Operations may at his or her discretion request a review of the record of the case by NRC Personnel Security Review Examiners. If such a request is made, the Executive Director for Operations shall immediately cause the individual to be notified of that fact and of those matters at issue in the hearing on which the Executive Director for Operations desires a review by the NRC Personnel Security Review Examiners. The Executive Director for Operations shall further inform the individual that within 10 days of receipt of this notice, the individual may submit a brief concerning those matters at issue for the consideration of the NRC Personnel Security Review Examiners. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(d) In the event of a request for a review pursuant to paragraphs (b) and (c) of this section, the Hearing Counsel may file a brief within 10 days of being notified by the Executive Director for Operations that a review has been requested. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(e) The Hearing Counsel may also request a review of the case by NRC Personnel Security Review Examiners. The request for review, which shall set

forth those matters at issue in the hearing on which the Hearing Counsel desires a review, shall be submitted to the Executive Director for Operations within five days after receipt of the Hearing Examiner's findings and recommendation. Within 10 days of the request for review, the Hearing Counsel may file a brief which shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners. A copy of the request for review, and a copy of any brief filed, shall be immediately sent to the individual. If the Hearing Counsel's request is for a review of a recommendation favorable to the individual, the individual may, within 10 days of receipt of a copy of the request for review, submit a brief concerning those matters at issue for consideration of the NRC Personnel Security Review Examiners. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(f) The time limits imposed by this section for requesting reviews and the filing of briefs may be extended by the Executive Director for Operations for good cause shown.

(g) In the event a request is made for a review of the record by NRC Personnel Security Review Examiners, the Executive Director for Operations shall forthwith send the record, with all findings and recommendations and any briefs filed by the individual and the Hearing Counsel, to the NRC Personnel Security Review Examiners. If neither the individual, the Executive Director for Operations, nor the Hearing Counsel requests such a review, the final determination shall be made by the Executive Director for Operations on the basis of the record with all findings and recommendations.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

§ 10.32 Recommendation of the NRC Personnel Security Review Examiners.

(a) The Executive Director for Operations shall designate three NRC Personnel Security Review Examiners to conduct a review of the record of the

case. To qualify as a Review Examiner, the person designated shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as Review Examiner reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Review Examiner reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Review Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The designated Review Examiners shall individually and independently, without consulting or otherwise communicating with one another, consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. Review Examiners may request such additional briefs as any of them deems appropriate, which will be obtained by the Executive Director for Operations and provided to each Review Examiner. When a Review Examiner determines that additional evidence or further proceedings are necessary, the record may be returned to the Executive Director for Operations with a recommendation that the case be remanded to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony.

(c) In conducting the review, Review Examiners shall make individual findings and recommendations as to the eligibility or continued eligibility of an individual for access authorization and/or employment clearance on the record supplemented by additional testimony or briefs as have previously been determined by a Review Examiner(s) as appropriate. When additional testimony is taken by the Hearing Examiner, a written transcript of such testimony shall be made by a person possessing